

CROSS REFERENCE

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DECLARATION
AND
BY-LAWS

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ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
OF
PREMISES AT
INDIANAPOLIS, INDIANA
PURSUANT TO THE HORIZONTAL PROPERTY LAW OF THE
STATE OF INDIANA

NAME -- HERITAGE SQUARE HORIZONTAL PROPERTY REGIME

This instrument was prepared by
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DECLARATION OF CONDOMINIUM OWNERSHIP
 AND OF
 EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS
 FOR
 HERITAGE SQUARE HORIZONTAL PROPERTY REGIME
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DECLARATION OF CONDOMINIUM OWNERSHIP
AND OF
EASEMENTS, RESTRICTIONS, COVENANTS AND BY-LAWS
FOR
HERITAGE SQUARE HORIZONTAL PROPERTY REGIME

THIS DECLARATION, made and entered into by E & F REALTY CO., an Indiana general partnership (hereinafter referred to as "Declarant"):

W I T N E S S E T H T H A T:

WHEREAS, Declarant owns certain real estate located in Marion County, Indiana, more particularly described as follows:

A part of the West half of the Southwest quarter of Section 9, Township 14 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said half quarter section; thence North 87 degrees 58 minutes 48 seconds East along the South line thereof 470.00 feet to the Point of Beginning; thence North 00 degrees 22 minutes 31 seconds East 305.39 feet; thence North 87 degrees 58 minutes 59 seconds East 176.00 feet; thence South 01 degree 28 minutes 12 seconds East 305.16 feet to the South line of said half quarter section; thence South 87 degrees 58 minutes 48 seconds West along said South line 185.82 feet to the Point of Beginning containing 1.27 acres more or less, and subject to a 45 feet right-of-way along Southport Road.

(hereinafter referred to as the "Real Estate"); and

WHEREAS, the Real Estate, and the Association and each Owner (as hereinafter defined), shall be benefited by a nonexclusive ingress-egress easement, subject to the requirement that the Association pay a pro rata share of the expenses of repair and maintenance of such easement, which easement is described as follows:

A part of the West half of the Southwest quarter of Section 9, Township 14 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said half quarter section; thence North 87 degrees 58 minutes 48 seconds East along the South line thereof 655.82 feet to the Point of Beginning; thence North 01 degree 28 minutes, 12 seconds West 305.16 feet; thence North 87 degrees 58 minutes 59 seconds East 24.00 feet; thence

South 01 degree 28 minutes 12 seconds East 305.16 feet to the South line of said half quarter section; thence South 87 degrees 58 minutes 48 seconds West along said South line 24.00 feet to the Point of Beginning, containing 0.17 acres, more or less.

WHEREAS, Declarant intends to improve the Real Estate with a condominium project containing eight (8) commercial units to be known as Heritage Square Horizontal Property Regime; and

WHEREAS, it is the desire and intention of Declarant to enable the Real Estate, together with all buildings, structures, improvements, fixtures and property of whatsoever kind thereon, and all easements, rights, appurtenances and privileges belonging or in anywise pertaining thereto (hereinafter referred to as the "Property"), to be owned by Declarant and by each successor in interest of Declarant under that certain type or method of ownership commonly known as an expandable condominium, and to submit the Property to the provisions of the Horizontal Property Law of the State of Indiana; and

WHEREAS, Declarant, acting under direction of the parties authorized to direct Declarant, has elected to establish, for the benefit of Declarant and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, which shall be known as "Heritage Square Horizontal Property Regime", certain easements, privileges and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, Declarant has further elected to declare that the several owners, mortgagees, occupants, and other persons acquiring any interest in the Property shall at all times enjoy the benefits of, and shall at all times hold their interests subject to the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of ownership of the Property and to facilitate the proper administration thereof and are established for the

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purpose of enhancing and perfecting the value, desirability and attractiveness of the Property;

NOW, THEREFORE, Declarant, as the owner of the Real Estate and for the purposes set forth, DECLARES AS FOLLOWS:

ARTICLE I

DEFINITIONS

1. For the purpose of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

(a) "Act" means the Horizontal Property Law of the State of Indiana, I.C. 32-1-6-1, et seq. The Act is incorporated herein by reference.

(b) "Association" means Heritage Square Co-Owners Association, Inc., the association of Co-owners of Heritage Square, more particularly described in Article V hereof.

(c) "Board" or "Board of Directors" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors elected by the Co-owners in accordance with the By-Laws, and as further described in Article V.

(d) "Building" means the structure on the Real Estate in which the Condominium Units are located. The Building is more particularly described and identified on the Plans and in Article II of this Declaration.

(e) "By-Laws" means the By-Laws of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached to this Declaration as Exhibit "B" and incorporated herein by reference.

(f) "Common Areas" means the Common Areas and Facilities and the Limited Common Areas and Facilities.

(g) "Common Areas and Facilities" means all portions of the Property, except the Condominium Units, as defined more particularly in Article III of this Declaration.

(h) "Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Facilities and Limited Common Areas and Facilities (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

(i) "Condominium Unit" means each one of the units constituting a part of the Property, each individual unit being more particularly described in the Plans and in Article II of this Declaration. Such term also includes the undivided percentage interest in Common Areas and Facilities and Limited Common Areas and Facilities.

(j) "Co-owners" means the Owners of all the Condominium Units.

(k) "Declarant" means and refers to E & F Realty Co., an Indiana general partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant. A mortgagee acquiring title by virtue of foreclosure against the Declarant or by acceptance of a deed in lieu of foreclosure does not assume the prior obligations or liabilities of the Declarant.

(l) "Declaration" means this instrument, by which the Property is submitted to the provisions of the Act, and shall include such amendments, if any, to this instrument as from time to time may be adopted pursuant to the terms hereof.

(m) "Heritage Square" means the name by which the Property and the Horizontal Property Regime shall be known.

(n) "Limited Common Areas and Facilities" means a portion or portions of the Common Areas and Facilities which are designated by this Declaration, the Plans or action of the Board as being Limited Common Areas and Facilities reserved for the use of a certain Condominium Unit or Condominium Units to the exclusion of the other Condominium Units.

(o) "Owner" means the record owner, whether one or more Persons, of a fee simple title to any Condominium Unit, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(p) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Facilities and Limited Common Areas and Facilities appertaining to each Condominium Unit as specifically expressed in Article III of this Declaration.

(q) "Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof. The Percentage Vote to which each owner shall be entitled on any matter upon which the Co-owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Condominium Unit.

(r) "Person" means a natural individual, corporation, partnership, association, trust or other legal entity or any combination thereof capable of holding title to real property.

(s) "Plans" means the site plan of the Property showing location of the Buildings in relation to "lot lines" and the floor plans of the Buildings and the Condominium Units, submitted pursuant to the provisions of the Act, all of which are incorporated herein by reference.

(t) "Property" means the Real Estate, all improvements and structures constructed or contained therein or thereon, including the Building, and all easements, rights and appurtenances belonging thereto, and all fixtures and property intended for the mutual use, benefit or enjoyment of the Owners, but not including the personal property of the Owners.

ARTICLE II

CONDOMINIUM UNITS

1. Description and Ownership. The legal description of each Condominium Unit shall consist of an identifying symbol of numbers and/or letters for each Condominium Unit as shown on the Plans and on Exhibit "B". Every deed, lease, mortgage or other instrument shall describe a Condominium Unit by its identifying number or symbol as shown on the Plans, and every such description shall be deemed good and sufficient for all purposes. No Owner shall, by deed, plat or otherwise, subdivide or in any other manner cause a Condominium Unit to be separated into any tracts or parcels different from the whole Condominium Unit as shown on the Plans.

2. Appurtenances. Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including but not limited to all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use, and operations of the Building or which are normally designed for common use; provided, however, that all fixtures,

equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. Also, the interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls and all of the floors and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit.

3. Boundaries. The boundaries of each Condominium Unit shall be shown on the Plans without regard to the existing construction measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Condominium Unit. In the event any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

4. Certain Structures Not Constituting Part of A Condominium Unit. No Owner shall own any pipes, wires, conduits, public utility lines or structural components running through a Condominium Unit and serving more than that Condominium Unit, whether or not such items shall be located in

the floors, ceilings or perimeter or interior walls of the Condominium Unit, except as a tenant-in-common with all other Owners.

ARTICLE III

COMMON AREAS AND FACILITIES AND LIMITED COMMON AREAS AND FACILITIES

1. Description of Common Areas and Facilities. Except as otherwise provided herein or on the Plans, Common Areas and Facilities shall consist of (1) the Property, excluding the Condominium Units, (2) the foundations, columns, girders, beams, supports, other structural portions of the Buildings and exterior surfaces of roofs of the Buildings, (3) the yards, sidewalks, drives and parking areas, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Common Areas and Facilities, (4) central electricity, gas, water and sanitary sewer mains serving the Buildings, if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the buildings unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits and public utilities lines which serve more than one Condominium Unit, (7) floors, roofs and exterior perimeter walls of the Buildings, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Common Areas and Facilities, (8) all facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Common Areas and Facilities or as part of the Condominium Unit, and (9) such other areas as are designated on the Plans.

2. Description of Limited Common Areas and Facilities. Limited Common Areas and Facilities and those Condominium Units to which use thereof is limited are as follows:

(a) The halls, corridors, lobbies, stairs, stairways, entrances and exits of the Building, if any (except those

located within the interior of Condominium Units) shall be limited to the use of the Condominium Units to which they appertain.

(b) The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.

(c) Any other areas designated and shown on the Plans as Limited Common Areas and Facilities shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

3. Ownership and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Facilities and Limited Common Areas and Facilities, as tenants in common with all other Owners, equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas appertaining to each Condominium Unit is set forth in Exhibit "A" attached hereto. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units which have been submitted and subjected to the Act and this Declaration as herein provided and which constitute a part of Heritage Square. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and then only if in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to Heritage Square and the Association upon which the Co-owners are entitled to vote.

ARTICLE IV
GENERAL PROVISIONS AS TO
CONDOMINIUM UNITS AND COMMON AREAS

1. Submission of Property to Act. The Property is hereby submitted to the provisions of the Act.

2. No Severance Of Ownership. No Owner shall execute any deed, mortgage, lease, or other instrument affecting title to a Condominium Unit without including therein both the Owner's interest in the Condominium Unit and the Condominium Unit's corresponding percentage of ownership in the Common Areas, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

3. Easements. (a) Encroachments. In the event that, by reason of the construction, settlement or shifting of the Building, any part of the Common Areas encroach or shall hereafter encroach upon any part of any Condominium Unit, or, if by reason of the design or construction of any Condominium Unit, it shall be necessary or advantageous to an Owner to use or occupy any portion of the Common Areas for any reasonable use appurtenant to that Condominium Unit, which will not unreasonably interfere with the use or enjoyment of the Common Areas by other Owners, or, if by reason of the design or construction of utility and ventilation systems, any main pipes, ducts or conduits serving more than one Condominium Unit encroach or shall hereafter encroach upon any part of any Condominium Unit, valid easements for the maintenance of such encroachment and for such use of the Common Areas are hereby established and shall exist for the benefit of such Condominium Unit or the Common Areas, as the case may be, so long as all or any part of the Building shall remain standing; provided, however, that in no event shall a valid easement for any

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encroachment or use of the Common Areas be created in favor of any Owner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Property by the other Owners and if it occurred due to the willful conduct of any Owner.

(b) Utility Easements. All public utilities, including cable television companies, serving the Property are hereby granted the right to install, lay, construct, renew, alter, remove, repair, replace, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus and other equipment into, over, under, along, on and through any portion of the Common Areas for the purpose of providing utility services to the Property. The Board may hereafter grant additional utility easements for the benefit of the Property over, under, along and on any portion of the Common Areas, and each Owner hereby grants to the Board an irrevocable power of attorney to execute, acknowledge, register or record for and in the name of all the Owners, such instrument or instruments as may be necessary to effectuate the foregoing.

(c) Easements To Run With The Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property, or any part or portion thereof. Reference in the respective deeds of conveyance, or in any mortgage or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Condominium Unit as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

4. Use of the Common Areas and Facilities. Subject to the provisions of Paragraph 3 of this Article, each Owner shall have the right to use the Common Areas and Facilities (except the Limited Common Areas and Facilities) in common with all other Owners, as may be required for the purpose of ingress and egress to, and use, occupancy and enjoyment of, the respective Condominium Unit owned by each Owner. Such rights shall extend to the Owner and the members of such Owner's employees, invitees, lessees and guests. The use of the Common Areas and Facilities and the rights of the Owners with respect thereto shall be subject to and governed by the provisions of the Act, this Declaration, the By-Laws and rules and regulations of the Board.

5. Maintenance of Common Areas: Common Expenses. Except as otherwise provided herein, management, repair, alteration and improvement of the Common Areas shall be the responsibility of the Board. Each Owner shall pay his proportionate share of the expenses of maintenance, repair, replacement, administration and operation of the Common Areas and other Common Expenses. Such proportionate share shall be in the same ratio as the percentage of ownership in the Common Areas as set forth in Exhibit "A". Payment thereof shall be in such amount and at such times as may be provided by the By-Laws or rules and regulations of the Board. In the event of the failure of an Owner to pay his proportionate share when due, the amount thereof shall constitute a lien on the interest of such Owner in the Property pursuant to the terms of the Act. Abandonment of a Condominium Unit or non-use of the Common Areas by an Owner shall not relieve such Owner from his obligation to pay his proportionate share of Common Expenses.

6. Parking Areas. Any portion of the Property allocated to parking purposes shall be part of the Common Areas and Facilities and shall be subject to the reasonable and non-discriminatory rules and regulations of the Board.

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7. Separate Real Estate Taxes. It is intended and understood that real estate taxes are to be separately assessed and taxed to each Condominium Unit and that the Common Areas are to be separately taxed to each Condominium Unit in accordance with the Owner's corresponding percentage of ownership in the Common Areas and Facilities. In the event that, for any year, such taxes are not separately taxed to each Owner, but are taxed on the Property as a whole, then each Owner shall pay his proportionate share thereof in accordance with his respective percentage of ownership interest in the Common Areas.

8. Utilities. Each Owner shall pay for his own telephone, electricity and other utilities which are separately metered or billed to his Condominium Unit by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses, unless otherwise determined by the Board.

9. Insurance. Each Owner shall be responsible for his own insurance on the contents of his own Condominium Unit, and for additions and improvements thereto and decorating and furnishings and personal property therein; and for personal property stored elsewhere on the Property; and his personal liability insurance, except as provided in the By-Laws.

The Board shall obtain fire and extended coverage insurance insuring the Property as set forth in Article VII hereof. The Board shall obtain comprehensive public liability insurance in such limits as the Board shall deem appropriate, together with workmen's compensation insurance and other liability insurance, if deemed necessary or appropriate by the Board. Such insurance shall inure to the benefit of each Owner, the Association, the Board, and any managing agent or company acting on behalf of the Association. Such insurance coverage shall also cover cross liability claims of one insured against the other. The premiums for all such insurance shall be paid by the Association as part of the Common Expenses.

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The Board shall not be responsible for obtaining insurance on any additions, alterations or improvements made by any Owner to his Condominium Unit unless and until such Owner shall request the Board in writing so to do, and shall make arrangements satisfactory to the Board to reimburse the Board for any additional premiums attributable thereto; and upon the failure of such Owner so to do, the Board shall not be obligated to apply any insurance proceeds to restore the affected Condominium Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements.

Each Owner hereby waives and releases any and all claims which he may have against any other Owner, the Board, its officers, members of the Board, the Declarant, the manager and managing agent of the Property, and their respective employees and agents, for damage to the Common Areas, the Condominium Units, or to any personal property located in the Condominium Units or Common Areas caused by fire or other casualty.

10. Maintenance, Repairs and Replacements of Condominium Units.

(a) By the Board. The Board, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of each Condominium Unit which contribute to the support of the Buildings, excluding, however, interior wall, ceiling and floor surfaces, but including outside walls. In addition, the Board shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be located within the Condominium Unit boundaries exclusive of any portions of the foregoing which may be located at or beyond the wall, ceiling or floor outlets, or which may be the responsibility of an individual Owner under any other provision of this Declaration. The Board may replace and repair any window glass, window frames and doors, or any utility service which

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constitutes a safety hazard, in the event any Owner fails to do so as provided in subparagraph (b) of this Paragraph 10 of this Article, but the expense of same shall be paid by the defaulting Owner.

(b) By the Owner. Except as otherwise provided in subparagraph (a) above, each Owner shall furnish, at his own expense, and be responsible for the following:

(1) All of the maintenance, repairs and replacements within his own Condominium Unit and all of the window glass, window frames and doors appurtenant thereto, and all internal installations of such Condominium Unit such as televisions, refrigerators, ranges and other kitchen appliances, lighting fixtures and other electrical fixtures, appliances, and heating, plumbing and air-conditioning fixtures, including air-conditioning condenser units and heat pump, whether or not located within such Owner's Unit, or other installations, and any portion of any other utility service facilities located within the Condominium Unit boundaries; provided however, such maintenance, repairs and replacements as may be required for the bringing of water or electricity to the Condominium Unit, shall be furnished by the Board as part of the Common Expenses. The Board may provide, by its rules and regulations, for ordinary maintenance and minor repair and replacements to be furnished to Condominium Units as a Common Expense. No Owner shall make any alterations or additions to his Condominium Unit which affects the structural integrity of any other Condominium Unit or Building.

(2) All of the decorating within his own Condominium Unit from time to time, including painting, wall papering, washing, cleaning, paneling, partitioning, floor covering, draperies, window

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shades, curtains, lighting and other furnishings and interior decorating. Each Owner shall be entitled to the exclusive use of such portions of the perimeter walls, floors, and ceilings as lie within the boundaries of his Condominium Unit as shown on the Plans, and such Owner shall maintain such portions in good condition and repair at his sole expense. Each Owner shall maintain any identification sign located upon the exterior of his Unit. All such maintenance and use shall be subject to the rules and regulations of the Board. The interior and exterior surfaces of window glass in all windows forming part of perimeter wall of a unit shall be cleaned or washed at the expense of each respective Owner. Decorating of the Common Areas (other than interior surfaces within the Condominium Units as above provided), and any redecorating of Condominium Units to the extent made necessary by any damage to existing decorating of such Condominium Units caused by maintenance, repair or replacement work on the Common Areas by the Board, shall be furnished by the Board as part of the Common Expenses. Nothing herein contained shall be construed to impose a contractual liability upon the Board for maintenance, repair and replacement, but the Board's liability shall be limited to damages resulting from negligence. The respective obligations of the Board and Owners set forth in the Declaration shall not be limited, discharged or postponed by reason of the fact that any such maintenance, repair or replacement is required to cure a latent or patent defect in material or workmanship in the construction of the Property.

11. Negligence of Owner. If, due to the negligent act or omission of an Owner, his officers, employees, contractors, invitees, guests or other authorized occupants or visitors of such Owner, damage shall be caused to the Common Areas or to a Condominium Unit or Condominium Units owned by others, or

maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Board, subject to the rules, regulations and By-Laws of the Board.

12. Joint Facilities. To the extent that equipment, facilities and fixtures within any Condominium Unit shall be connected to similar equipment, facilities or fixtures affecting or serving other Condominium Units or the Common Areas, then the use thereof by the individual Owners shall be subject to the rules and regulations of the Board. The authorized representatives of the Board, or of the manager or managing agent for the Buildings, shall be entitled to reasonable access to the individual Condominium Units as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Condominium Units or the Common Areas, and the use thereof by the individual Owners shall be subject to the reasonable rules and regulations of the Board.

13. Alterations, Additions and Improvements. No alterations of any Common Areas or any additions or improvements thereto shall be made by any Owner without the prior written approval of the Board nor shall any Owner make any alteration in or to his respective Condominium Unit which would affect the safety or structural integrity of the Building in which the Condominium Unit is located. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. If Declarant shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a recorded supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners. In accordance with the commercial nature

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of Heritage Square, an Owner of two (2) or more adjoining Condominium Units may alter the boundaries to allow direct access between such Units. Such Owner shall first present the plans and specifications for any such alteration to the Board for its written consent, which consent shall not be unreasonably withheld. Any such alterations shall be reflected by a recorded supplement to the Plans. Any and all costs incurred with respect to such alteration shall be paid by such Owner and any of such costs not paid by such Owner may be treated as a portion of such Owner's share of the Common Expenses.

ARTICLE V

INCORPORATION OF ASSOCIATION

1. Association. Declarant, upon the sale of one (1) or more of the Condominium Units, shall cause to be incorporated a not-for-profit corporation under the laws of the State of Indiana, to be called Heritage Square Co-Owners' Association, Inc. which corporation shall be the governing body for all the Owners for the maintenance, repair, replacement, administration and operation of the Property. Upon the formation of the Association, every Owner shall be a member therein, which membership shall automatically terminate upon the sale, transfer or other disposition of such Owner's Condominium Unit, at which time the new Owner shall automatically become a member therein. The Association shall have one class of member.

All members of the Association shall abide by the rules and regulations of the Association. The operation of the Association shall be more fully described in its Articles of Incorporation. In the event of such incorporation, the By-Laws shall become the By-Laws of the Association. Until such incorporation, there is hereby created an association of Owners to be known as the Heritage Square Condominium Owners' Association ("Unincorporated Association"). Each Owner shall be a member of the Unincorporated Association and the

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Association, but membership shall terminate when such person ceases to be an Owner. The Association shall elect a Board of Directors in accordance with and as prescribed by the By-Laws.

2. Liability Of The Board. Neither the members of the Board nor the officers thereof shall be liable to the Owners for any mistake of judgment or for any acts or omissions of any nature whatsoever as such Board members and officers, except for any acts or omissions found by a court to constitute willful misconduct in the performance of duty. The Owners (and, to the extent permitted by law, the Association) shall indemnify and hold harmless each of the members of the Board and each of the officers against all contractual and other liabilities to others arising out of contracts made by or other acts of the Board and officers on behalf of the Owners or the Association, or arising out of their status as Board members or officers, unless any such contract or act shall have been made fraudulently or with gross negligence or contrary to the provisions of this Declaration. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claims, action, suit or proceeding, whether civil, criminal, administrative or other in which any member of the Board or officers may be involved by virtue of such person being or having been such member or officer; provided, however, that such indemnity by the Association shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for willful misconduct in the performance of his duties as such member or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in any manner determined by the Board (who may be counsel regularly retained by the Association) there is not reasonable ground for such person or officer being adjudged

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liable for willful misconduct in the performance of his duties as such member. The Board shall have authority to purchase and maintain insurance on behalf of the officers and members of the Board against any liability or settlement based on asserted liability incurred by them by reason of being or having served in such capacity, whether or not the Association would have the power to indemnify them against such liability or settlement under the provisions of this Paragraph 2 of this Article.

ARTICLE VI

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Condominium Units and Common Areas shall be occupied and used as follows:

1. Each Condominium Unit or any two or more Condominium Units used together shall be used for purposes for which the Property was designed in accordance with applicable zoning and use laws and for no other purpose without the prior consent of the Board. That part of the Common Areas separating any two or more adjoining Condominium Units used together as aforesaid may be altered to afford ingress and egress to and from such adjoining Condominium Units in accordance with the provisions of Article IV and in such manner and upon such reasonable conditions as shall be determined by the Board in writing.
2. There shall be no obstruction of the Common Areas and Facilities, or Limited Common Areas and Facilities serving more than one (1) Condominium Unit, nor shall anything be stored in the Common Areas and Facilities, or Limited Common Areas and Facilities serving more than one (1) Condominium Unit (except in areas designed for such purpose), without the prior written consent of the Board except as hereinafter expressly provided. Owners shall be obligated to maintain and keep in good order and repair their respective Condominium Units.
3. Nothing shall be done or kept in any Condominium Unit or in the Common Areas which will increase the rate of insurance on the Property or contents thereof, applicable for

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residential use, without the prior written consent of the Board. Owners shall not permit anything to be done or kept in their respective Condominium Units or in the Common Areas which will result in the cancellation of insurance on the Property, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Areas.

4. Owners shall be individually responsible for insuring their personal property in their respective Condominium Units, their personal property stored elsewhere on the Property (if applicable) and their personal liability to the extent not covered by the liability insurance for all the Owners obtained by the Board as provided herein.

5. Owners shall not cause or permit anything to be placed on the outside walls, doors and windows of the Buildings or in the Common Areas, and no sign, awning, canopy, shutter, air-conditioning unit, radio or television antenna shall be affixed to or placed in, through or upon the exterior walls, doors, windows or roof or any part thereof, without the prior consent of the Board, which shall not be unreasonably withheld. Provided, however, Declarant may affix an identification sign on the exterior of each Unit. Any changes in such sign shall be subject to the approval of Declarant until such time as Declarant shall have sold all of the Units within Heritage Square and thereafter shall be subject to the reasonable approval of the Board.

6. No unlawful, noxious or offensive activity shall be carried on in any Condominium Unit or in the Common Areas, nor shall anything be done therein or thereon, either willfully or negligently, which may be or become, in the reasonable judgment of the Board, a nuisance to the other Owners or occupants.

7. Nothing shall be done in any Condominium Unit or in, on or to the Common Areas which will impair the structural integrity of a Building or which would structurally change a Building except as is otherwise provided herein.

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8. Nothing shall be altered or constructed in or removed from the Common Areas, except upon the consent of the Board.

9. No additional building shall be erected or located within Heritage Square other than the Building designated in the Declaration and shown on the Plans, without the consent of the Board. Declarant may, however, erect a business identification sign or signs on or near the perimeter of the Real Estate for the benefit of the Owners. Such sign or signs shall constitute a part of the Common Area and shall be for the benefit of all Owners, under the reasonable control of the Board.

10. Notwithstanding any provision hereof to the contrary, at all times and from time to time prior to the sale of the last Condominium Unit in the Property, Declarant, beneficiaries of Declarant, their agents, successors and assigns, hereby reserve the right: (a) to lease or sell any such Condominium Units; (b) to erect and maintain on the Property all advertising signs, banners, lighting and other sales devices for the purpose of aiding the sale or leasing of Condominium Units on the Property; (c) to maintain sales and business offices on the Property, including model Condominium Units for display, to facilitate the sale or leasing of Condominium Units thereon; and (d) to utilize the Common Areas and Facilities and, as appropriate, the Limited Common Areas and Facilities for ingress, egress and parking in connection with the sale and leasing of Condominium Units on the Property.

ARTICLE VII

INSURANCE, AND DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS

1. Insurance. The Board shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Property in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Common Areas. If the Board can obtain such

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coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the mortgagees of each Condominium Unit upon the following terms and conditions.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board, who shall act as the insurance trustee and hold such proceeds for the benefit of the insured parties. In the event that the Board has not posted surety bonds for the faithful performance of their duties as such managers or if such bonds do not exceed the funds which will come into its hands, and there is a damage to a part or all of the Property resulting in a loss, the Board shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount to be determined by a majority vote of a meeting of the Co-owners but not to exceed 125% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Owners and the respective mortgagees. The proceeds shall be used or disbursed by the Association or Board, as appropriate, only in accordance with the provisions of this Declaration.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of

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each damaged Owner to the damages of all Owners directly damaged by any event insured under the said master casualty insurance policy.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Paragraph 2 hereunder.

The Co-owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, the Board, any committee or organ of the Association or Board, any managing agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to Heritage Square, all Owners of Condominium Units and all other persons entitled to occupy any Condominium Unit or other portions of Heritage Square.

The Co-owners, through the Association, shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board shall from time to time deem necessary, advisable or appropriate, including but not limited

to, liability insurance on vehicles owned by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board his right to adjust with the insurance companies all losses under policies purchased by the Board.

The premiums for all such insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

In no event shall any distribution of proceeds be made by the Board directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his mortgagee jointly.

Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property, the contents of his Condominium Unit (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Property (if allowed), and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance

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policy to be obtained by the Association. Each Owner may obtain casualty insurance at his own expense upon his Condominium Unit but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

The Board shall also obtain insurance or a surety bond covering each member of the Board, the officers of the Association and such other persons as the Board shall determine to indemnify the Association against acts of fraud or dishonesty by such persons. Such insurance shall, if reasonably possible, contain coverage for any insurance proceeds received. The expenses of such insurance or surety bond shall be a Common Expense.

2. Casualty and Restoration.

(a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of the Building" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of the Building" means a determination, made by a vote of two-thirds (2/3) of all Co-owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of the Building has

occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any substantial part of the Building for the purpose of making the determination of whether or not there has been a complete destruction of the Building. If such a special meeting is not called and held within such ninety (90) day period, or if the determination of whether or not there has been a complete destruction of the Building has not been made within such ninety (90) day period, then it shall be conclusively presumed that the Co-owners determined that there was not a complete destruction of the Building, and the Association shall proceed with repair and reconstruction as herein provided.

(b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are not insurance proceeds, and if the Property is not to be removed from the horizontal property regime, the cost for restoring the damage and repairing and reconstructing the Building (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Owners of Condominium Units in proportion to the ratio that the Percentage Interest of each Condominium Unit bears to the total Percentage Interest of all Condominium Units. Any such amounts payable by the Co-owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

(c) For purposes of subparagraph (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Condominium Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(d) If, under subparagraph (a) above, it is determined by the Co-owners at the special meeting of the Association referred to therein that there has been a complete destruction of the Building, the Co-owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the Building shall be repaired and reconstructed. The Building shall not be reconstructed or repaired if it is the determination of the Co-owners at said special meeting that there has been a complete destruction of the Building unless by a vote of two-thirds (2/3) of all of the Co-owners a decision is made to rebuild, reconstruct and repair the Building. If two-thirds (2/3) of all of the Co-owners vote and decide that the Building is to be rebuilt, reconstructed and repaired, the insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any, received by the Association shall be contributed and paid as hereinabove provided in subparagraphs (a) and (b).

(e) If, in any case of the complete destruction of the Building, less than two-thirds (2/3) of all of the Co-owners vote in favor of the rebuilding, reconstruction and repair of the Building, the Building shall not be rebuilt, reconstructed or repaired and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act:

(i) the Property shall be deemed to be owned in common by the Condominium Owners;

(ii) the undivided interest in the Property owned in common which shall appertain to each Condominium Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;

(iii) any liens affecting any of the Condominium Units shall be deemed to be transferred in accordance

with the existing priorities to the percentage of the undivided interest of the Condominium Unit Owner in the Property; and

(iv) the Property shall be subject to an action for partition at the suit of any Condominium Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one (1) fund and shall be divided among all the Condominium Unit Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Condominium Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Condominium Unit Owner.

(f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board or Association has the responsibility of maintenance and repair, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board desires.

(g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building is to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than Twenty Thousand Dollars (\$20,000.00), then the construction fund shall be disbursed in payment of such costs upon order of

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the Board; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of the Building or other improvement is more than Twenty Thousand Dollars (\$20,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect or engineer qualified to practice in Indiana and employed by the Board to supervise such work, payment to be made from time to time as the work progresses. The architect or engineer shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the architect or engineer for the services and materials described; and (3) that the costs as estimated by said architect or engineer for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) Encroachments upon or in favor of Condominium Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner

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upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Building stands.

(iv) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Board as a reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Board of Managers it may be distributed to the Owners in the Buildings affected and their mortgagees who are the beneficial owners of the fund. The action of the Board in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

ARTICLE VIII

REMEDIES

Abatement and Enjoinment. The violation of any rule or regulation adopted by the Board, or the breach of any restriction, covenant, By-Law or provision herein contained, shall give the Board the right: (a) to enter upon that part of the Property where such violation or breach exists and summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and Declarant, its beneficiaries, successors or assigns, the Board and its agents, shall not thereby be deemed guilty in any manner of trespass; and (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the

continuance of any breach. All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate of twelve per cent (12%) per annum until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of such defaulting Owner's respective share of the Common Expenses, and the Board shall have a lien for all of the same upon the Condominium Unit of such defaulting Owner and upon all of the additions and improvements thereto. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

ARTICLE IX

GENERAL PROVISIONS

1. Until such time as the Board provided for in this Declaration is formed Declarant, or its nominee, shall exercise and perform the powers, rights, duties and functions of the Board.

2. Upon written request to the Board, the holder of any duly recorded mortgage secured by any Condominium Unit shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner whose Condominium Unit is subject to such mortgage. Upon written request to the Board, the holder of a recorded first mortgage covering a Condominium Unit shall be given written notice of any default in the performance by the Owner of such Condominium Unit of any obligation under this Declaration which is not cured within any applicable cure period, or, if there is no such cure period, within sixty (60) days after default.

3. Each Owner hereby waives and releases any and all claims which such Owner may have against any other Owner, occupant, the Association, its officers, members of the Board,

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the Declarant and its beneficiaries, the managing agent, if any, and their respective employees and agents, for damage to the Common Areas and Facilities, the Condominium Units, or to any personal property located in the Condominium Units or Common Areas and Facilities, caused by fire or other casualty, to the extent that such damage is covered by fire or other form of casualty insurance.

4. Notices provided for in this Declaration and in the Act shall be in writing, and shall be addressed to the Board or Association, or any Owner, as the case may be, at the address of the Association as provided in the By-Laws, or the address of the respective Condominium Unit, if addressed to an Owner, or at such other address as herein provided. The Association or Board may designate a different address for notices by giving written notice of such change of address to all Owners. Any Owner may also designate a different address for notices by giving written notice of such change of address to the Board or Association. Notices addressed as above shall be deemed delivered when mailed by United States first class mail, or when delivered in person with written acknowledgment of the receipt thereof, or, if addressed to an Owner, when deposited in the mailbox or at the door of the Owner's Condominium Unit.

5. Notices required to be given any devisee, heir or personal representative of a deceased Owner may be delivered either personally or by mail to such party at the address appearing in the records of the Court wherein the estate of such deceased Owner is being administered.

6. Each grantee of the Declarant, and each subsequent grantee, by the acceptance of a deed of conveyance, each purchaser, and each tenant under a lease for a Condominium Unit, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every

character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance and lease.

7. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

8. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the Percentage Vote.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote (in person or by proxy) at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five per cent (75%) in the aggregate of the Percentage Vote. In the event any Condominium Unit is subject to a first mortgage, such mortgagees shall be notified of the meeting and the proposed amendment in the same manner as an Owner if such mortgagees have given prior notice of its mortgage interest to the Board

in accordance with the provisions of the By-Laws. During the two (2) year period commencing upon the date this Declaration is recorded (unless Declarant shall no longer own any interest in the Real Estate), no Amendment shall be effective without the written consent of Declarant.

(e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Condominium Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred per cent (100%) of the Co-owners, or (2) the provisions of Article VII of this Declaration with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all mortgagees whose mortgage interests have been made known to the Board in accordance with the provisions of the By-Laws.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(g) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Co-owners, the Association, the Board, any mortgagees or any other person to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, (ii) such amendment is recorded prior to the earlier of (1) the date on which Declarant has sold four (4) Condominium Units, or (2) January 1, 1985.

9. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

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10. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a condominium project.

11. The Plans setting forth the layout, location, identification numbers and dimensions of the Condominium Units and the Property are incorporated into this Declaration by reference, and have been filed in the office of the Recorder of Marion County, Indiana, as Instrument No. 84-1663. At the time of recordation of the Plans and this Declaration, all construction work within the Building (with regard to minor interior finish) may not have been completed. Declarant shall have the right, upon completion of construction, to file amended as-built floor plans for any Units not yet conveyed by Declarant.

IN WITNESS WHEREOF, the Declarant, E & F Realty Co., has caused this Declaration to be signed by its duly authorized general partner this 5th day of March, 1984.

E & F REALTY CO.

By Franklin L. Jackson
Franklin L. Jackson, General Partner

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STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Franklin L. Jackson, general partner of E & F Realty Co., an Indiana general partnership, who, having been duly sworn, acknowledges the execution of the foregoing Declaration for and on behalf of said partnership.

GIVEN under my hand and Notarial Seal this 5th day of March, 1984.

[Signature]
Notary Public

My Commission Expires:

March 5, 1984

My County of Residence:

Hendricks

This instrument was prepared by John W. Van Buskirk, Attorney.

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DESCRIPTION OF PERCENTAGE
INTERESTS OF CONDOMINIUM UNITS

The Percentage Interests of the Owners of the respective
Condominium Units in the Common Areas and Facilities and
Limited Areas and Facilities are now as follows:

<u>Condominium Unit</u>	<u>Percentage Interest</u>
1	12.5%
2	12.5%
3	12.5%
4	12.5%
5	12.5%
6	12.5%
7	12.5%
8	12.5%

EXHIBIT "A"

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EXHIBIT "B"

CODE OF BY-LAWS

OF

CO-OWNERS' ASSOCIATION, INC.

ARTICLE I

Identification

Section 1. Name. The name of the Association is the Heritage Square Co-Owners' Association, Inc. (hereinafter referred to as the "Association").

Section 2. Principal Office and Resident Agent. The post-office address of the principal office of the Association is 1030 Merchants Plaza, East Tower, Indianapolis, Indiana 46204; and the name and post-office address of its Resident Agent in charge of such office is John W. Van Buskirk, 1030 Merchants Plaza, East Tower, Indianapolis, Indiana 46204.

Section 3. Fiscal Year. The fiscal year of the Association shall begin at the beginning of the first day of January in each year and end at the close of the last day of December next succeeding.

ARTICLE II

Association Members

Section 1. Membership. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 2. Place of Meeting. All meetings of the members of the Association shall be held on the Property, or at such other reasonable place as may be determined by the Board of Directors and specified in the notices or waivers of notice thereof or proxies to represent members at such meetings.

Section 3. Annual Meetings. The initial meeting of the voting Members shall be held upon ten (10) days' written notice given by Declarant. Such written notice may be given at any time after at least two (2) Condominium Units have been purchased by Owners, but must be given not later than thirty (30) days after 75% of the Condominium Units have been purchased by Owners or twenty-four (24) months from the date hereof, whichever first occurs. The formation of the Association by Declarant shall not require Declarant to call the initial meeting of the voting Members any earlier than provided in the preceding sentence. Thereafter, there shall be an annual meeting of the voting members on the first Tuesday of October following such initial meeting, and on the first Tuesday of October of each succeeding year thereafter at 7:30 P.M., or at such other reasonable time or date (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the voting Members not less than ten (10) days prior to the date fixed for said meeting.

Section 4. Special Meetings. Special meetings of the members may be called at any time for the purpose of considering matters which require the approval of all or some of the voting Members, or for any other reasonable purpose.

Any such Special Meeting shall be called by written notice, authorized by a majority of the Board, or by the voting Members having one-fourth (1/4) of the total votes, and delivered not less than ten (10) days prior to the date fixed for such meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

Section 5. Notice of Meetings. Written or printed notice stating the place, day and hour of a meeting and, in case of a special meeting, the purpose or purposes for which such meeting is called shall be delivered or mailed by the Secretary of the Association to each member of record of the Association entitled to vote at the meeting, at such address as appears on the records of the Association, at least ten (10) days before the date of the meeting. Notice of any meeting of the members may be waived in writing by any Member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 6. Voting at Meetings.

(a) Voting Rights. There shall be one person with respect to each Condominium Unit who shall be entitled to vote at any meeting of the Members. Such person shall be known as a "Voting Member". Such Voting Member may be the Owner or one of the group composed of all the Owners of a Condominium Unit, or may be some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Any or all of such Voting Members may be present at any meeting of the Voting Members and may vote or take any action as a Voting Member, either in person or by proxy. The total number of votes of all Voting Members shall be one hundred (100), and each Owner or group of Owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the Common Areas and Facilities applicable to his or their Condominium Unit as set forth in Exhibit "B" attached to the Declaration. Declarant (or its nominee) may exercise the voting rights with respect to any Condominium Unit owned by it.

(b) Proxies. A Voting Member is entitled to vote either in person or by proxy, executed in writing by such Voting Member or by his or her duly authorized attorney-in-fact and delivered to the Secretary of the meeting. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the Secretary before the scheduled time of the meeting. In any meeting of the Voting Members called for the purpose of electing Members of the Board of Directors of the Association each Voting Member shall be permitted to cast the number of votes to which he is entitled, as hereinabove set forth, for each Member of the Board of Directors of the Association to be elected at such meeting.

(c) Quorum and Adjournments. The presence in person or by proxy of the Voting Members having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meetings.

Any meeting of the Voting Members, including both annual and special meetings and any adjournments thereof, may be adjourned to a later date without notice other than announcement at the meeting, even though less than a quorum is present.

Section 7. List of Voting Members. At least five (5) days before each meeting of Voting Members, the Secretary shall prepare or cause to be prepared a complete list of the Voting Members of the Association entitled to vote at such meeting arranged in alphabetical order with the address and number of votes entitled to be cast by each. Such list shall be on file in the principal office of the Association and shall be subject to inspection by any record Voting Member. The original or duplicate membership register shall be the only evidence as to the persons who are entitled as Voting Members to examine such lists, or to vote at such meeting.

Section 8. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Voting Members may be taken without a meeting, if prior to such action, a written consent thereto, setting forth the action so taken, is signed by all the Voting Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Voting Members. Such consent shall have the same effect as a unanimous vote of the Voting Members.

ARTICLE III

Board of Directors

Section 1. Number, Term of Office and Qualifications. The Board of Directors shall consist of three (3) persons. The terms of at least one-third (1/3) of the members of the Board shall expire annually. Directors shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes. The Board shall be elected by the Voting Members at their annual meeting and shall hold office until the next ensuing annual meeting of the Voting Members or until their successors have been duly elected and qualified. If a member of the Board of Directors shall cease to meet any qualification herein required for a member of the Board, such member shall thereupon cease to be a member of the Board and his place on the Board shall be deemed vacant. The Voting Members may remove any member of the Board with or without cause, and elect a successor at a meeting of the Voting Members called expressly for such purpose.

Section 2. Vacancies. Vacancies occurring in the membership of the Board of Directors caused by resignation, death or other incapacity, or increase in the number of members of the Board shall be filled by a majority vote of the remaining members of the Board, and each member so elected shall serve until the next meeting of the Voting Members, or until his successor shall have been duly elected and qualified. Notice specifying any increase in the number of members of the Board and the name, address and principal occupation of and other pertinent information about any member elected to fill any vacancy shall be given in the next mailing sent to the Voting Members after such increase or election.

Section 3. Annual Meetings. The Board of Directors shall meet annually, without notice, immediately following and at the same place as, the annual meeting of the Voting Members.

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Section 4. Regular Meetings. Regular meetings shall be held at such times and places, either within or without the State of Indiana, as may be determined by the President or Board of Directors.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by the President or by two (2) or more members of the Board, at any place within or without the State of Indiana, upon twenty-four (24) hours' notice specifying the time, place and general purposes of the meeting, given to each personally, by telephone or telegraph; or notice may be given by mail if mailed at least three (3) days before such meeting.

Section 6. Waiver of Notice. Any member of the Board of Directors may waive notice of any meeting in writing. Attendance by a member at any meeting shall constitute a waiver of notice of such meeting.

Section 7. Quorum. A majority of the entire Board of Directors then qualified and acting shall constitute a quorum and be sufficient for the transaction of any business, except for filling of vacancies in the Board of Directors which shall require action by a majority of the remaining members of the Board. Any act of the majority of the members of the Board present at a meeting at which a quorum shall be present shall be the act of the Board unless otherwise provided for by law or by these By-Laws. A majority of the Members present may adjourn any meeting from time to time. Notice of an adjourned meeting need not be given other than by announcement at the time of adjournment.

Section 8. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting, if prior to such action, a written consent thereto is signed by all the members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board.

ARTICLE IV

Officers

Section 1. Number of Officers. The officers of the Association shall consist of a President, a Secretary, a Treasurer and such officers or assistant officers as the Board shall from time to time create and so elect. Any two (2) or more offices may be held by the same person, except that the duties of the President and the Secretary shall not be performed by the same person. The President shall be chosen from among the Members of the Board. Officers shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes.

Section 2. Election and Terms. Each officer shall be elected by the Board of Directors at the annual meeting thereof and shall hold office until the next annual meeting of the Board or until his successor shall have been elected and qualified or until his death, resignation or removal. Any officer may be removed at any time, with or without cause, by vote of a majority of the whole Board, but such removal shall be without prejudice to the contract rights, if any, of the person so removed; provided, however, that election of an officer shall not of itself create contract rights.

Section 3. Vacancies. Whenever any vacancy shall occur in any office by death, resignation, increase in the number of officers of the Association, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected shall hold office until the next annual meeting of the Board or until his or her successor is duly elected or appointed.

Section 4. President. The President shall be the chief executive officer of the Association; shall preside at all meetings of the Voting Members and of the Board of Directors; shall have general and active supervision, control and management of the affairs and business of the Association, subject to the orders and resolutions of the Board; shall have general supervision and direction of all officers, agents and employees of the Association; shall see that all orders and resolutions of the Board are carried into effect; and in general shall exercise all powers and perform all duties incident to such office and such other powers and duties as may from time to time be assigned to him by the Board.

The President shall have full authority to execute proxies in behalf of the Association, to execute, with the Secretary, powers of attorney appointing other associations, corporations, partnerships, or individuals the agent of the Association, all subject to the provisions of The Indiana Horizontal Property Act, as amended, the Declaration and this Code of By-Laws.

Section 5. Secretary. The Secretary shall attend all meetings of the Board and of the Voting Members and shall act as Secretary at such meetings; shall give or cause to be given all notices provided for in these By-Laws or required by law; shall record all votes and the minutes of all proceedings of the meetings of the Voting Members and the Board in a book or books to be kept for that purpose and wherein resolutions shall be recorded; shall be custodian of the records of the Association; and, in general, shall exercise all powers and perform all duties as may be from time to time assigned to him or her by the Board or by the President.

Section 6. Treasurer. The Treasurer shall keep correct and complete financial records and books of account showing accurately at all times the financial condition of the Association; shall be the custodian of the Association Funds; shall immediately deposit, in the name and to the credit of the Association all monies and other valuable effects of the Association in such depositories as may be designated by the Board of Directors; shall disburse the funds of the Association as may be ordered by the Board or by the President; and in general shall exercise all powers, perform all duties customarily incident to such office and such other powers and duties as may from time to time be assigned to him by the Board or by the President.

ARTICLE V

Books and Records

Section 1. Books and Records, in General. The Board shall keep full and correct books of account in chronological order of the receipts and expenditures effecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be

requested by the Owner. Upon ten (10) days' notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such Owner, and such amount shall be binding upon the Board and the Association, and any mortgagee or grantee of such Owner furnished with such statement shall not be liable for, and the Condominium Unit of such Owner shall not be conveyed subject to a lien for, any unpaid assessment in excess of the amount set forth in such statement. Any mortgagee of any Condominium Unit who wishes to participate in any decision or consent in which it is entitled to participate by reason of the Declaration or these By-Laws shall provide the Secretary of the Board with its name and address and the Condominium Unit on which it holds a mortgage so that it may be notified of any such pending decision or consent and participate therein. Failure to so notify the Board shall constitute waiver by any such mortgagee of the right to participate in such decision or consent.

ARTICLE VI

Administration

Section 1. Board of Directors; Association. The direction and administration of the Property shall be vested in the Board of Directors ("Board"). The Owners, as described in the Declaration and in these By-Laws, shall elect the Board subject to any subsequent incorporation as provided in Article X of the Declaration of Condominium Ownership duly recorded herewith. Notwithstanding any other provisions herein contained to the contrary, all duties, functions and obligations herein imposed upon the Board are so imposed with the express understanding that the Board is the governing body and agent of the Owners and the Association.

Section 2. Determination of Board to be Binding. Notwithstanding that the words "Board" and "Association" may in some instances be used interchangeably in various sections of these By-Laws or the Declaration, matters of dispute or agreement between Owners relating to the Property or with respect to interpretation or application of the provisions of the Declaration or these By-Laws, shall be determined by the Board, which determination shall be final and binding on the Association and on all Owners.

Section 3. General Powers of the Board. The Board shall have the following general powers and duties:

- (a) To elect the officers of the Association as hereinabove provided;
- (b) To administer the affairs of the Association and the Property;
- (c) To engage the services of a manager or managing agent who shall manage and operate the Property and the Common Areas and Facilities thereof for all of the Owners, upon such terms and for such compensation and with such authority as the Board may approve (subject to Section 6 of this Article);
- (d) To formulate policies for the administration, management and operation of the Property and the Common Areas and Facilities thereof;

(e) To adopt administrative rules and regulations governing the administration, management, operation and use of the Property and the Common Areas and Facilities and to amend such rules and regulations from time to time;

(f) To provide for the maintenance, repair and replacement of the Common Areas and Facilities and payments therefor, and to approve payment vouchers or to delegate such approval to the officers of the manager or managing agent;

(g) To provide for the designation, hiring and removal of employees and other personnel, including accountants, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Property and the Common Areas and Facilities and to delegate any such powers to the manager or managing agent (and any such employees or other personnel who may be employees of the managing agent);

(h) To estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the Owners their respective shares of such estimated expenses, as hereinafter provided;

(i) To comply with the instructions of a majority of the Owners, as expressed in a resolution duly adopted at any Annual or Special Meeting of the Owners; and

(j) To exercise all other powers and duties of the Board of Directors or Owners as a group referred to in the Indiana Horizontal Properties Act ("Act"), and all powers and duties of a Board of Directors referred to in the Declaration or these By-Laws.

Section 4. Specific Powers of the Board. The Board, for the benefit of the Board, the Association and all Owners, shall provide and shall pay for out of the maintenance fund hereinafter provided, the following:

(a) Utility Service for Common Areas and Facilities. Waste, water removal, electricity, and telephone, heat, power and other necessary utility services for the Common Areas and Facilities (and, if not separately metered or charged, for the Condominium Units);

(b) Casualty Insurance. Insurance for the Property against loss or damage by fire and those perils contained in extended coverage, vandalism and malicious mischief endorsements and such other hazards as the Board may deem desirable, for the full insurable replacement cost of the Common Areas and Facilities and the Condominium Units in accordance with Article VIII of the Declaration. Premiums for such insurance shall be common expenses. Such insurance coverage shall be written in the name of, losses under shall be adjusted by, and the proceeds of such insurance shall be payable to, the members of the Board as trustees for each of the Owners and their respective mortgagees in their respective percentages of ownership interest in the Common Areas and Facilities as established in Exhibit "A" to the Declaration. The Board may engage the services of any

bank or trust company authorized to do trust business in Indiana to act as trustee, agent or depository on behalf of the Board for the purpose of receiving and disbursing the insurance proceeds resulting from any loss, upon such terms as the Board shall determine consistent with the provisions of the Act and the Declaration. The fees of such corporate trustee shall be Common Expenses. In the event of any loss in excess of \$50,000.00 in the aggregate, the Board shall engage a corporate trustee as aforesaid upon the written demand of the mortgagee or Owner of any Condominium Unit so destroyed.

The proceeds of such insurance shall be applied by the Board or by the corporate trustee on behalf of the Board for the reconstruction of the Buildings, or shall be otherwise disposed of, in accordance with the provisions of the Declaration and the Act; and the rights of the mortgagee of any Condominium Unit under any standard mortgage clause endorsement to such policies shall, notwithstanding anything to the contrary therein contained, at all times be subject to the provisions in the Act with respect to the application of insurance proceeds to reconstruction of a Building. Payment by an insurance company to the Board or to such corporate trustee of the proceeds of any policy, and the receipt of release from the Board of the Company's liability under such policy shall constitute a full discharge of such insurance company, and such company shall be under no obligation to inquire into the terms of any trust under which such proceeds may be held pursuant hereto, or to take notice of any standard mortgage clause endorsement inconsistent with the provisions hereof, or to see to the application of any payments of the proceeds of any policy by the Board or the corporate trustee;

(c) Liability Insurance. Comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and other liability insurance as it may deem desirable, insuring each Owner, the Association, its officers, members of the Board, Declarant, the manager and managing agent of the Buildings, if any, and their respective employees and agents, from liability in connection with the Common Areas and the streets and sidewalks adjoining the Property and insuring the officers of the Association and members of the Board from liability for good faith actions beyond the scope of their respective authorities. Such insurance coverage shall include crossliability claims of one or more insured parties against other insured parties. The premiums for such insurance shall be Common Expenses;

(d) Workmen's Compensation. Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

(e) Wages and Fees for Services. The services of any person or firm employed by the Board, including, without limitation the services of a person or firm to act as manager or as managing agent for the Property, the services of any person or persons required for maintenance or operation of the Property, and legal and/or accounting services necessary or proper in the operation of the Property or the enforcement of the Declaration and for the organization, operation and enforcement of the rights of the Association;

(f) Care of Common Areas and Facilities. Landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintenance, decorating, repair and replacement of the Common Areas and such furnishings and equipment for the Common Areas and Facilities as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire or provide the same for the Common Areas.

(g) Additional Expenses. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Board is required to secure or pay for pursuant to the terms of these restrictions or by law or which in its opinion shall be necessary or proper for the maintenance and operation of the Property as a first class condominium project or for the enforcement of the Declaration;

(h) Certain Maintenance of Condominium Units. Maintenance and repair of any Condominium Unit as provided in the Declaration, and maintenance and repair of any Condominium Unit if such maintenance or repair is necessary in the discretion of the Board to protect the Common Areas or any portion of a Building and the Owner or Owners of said Condominium Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair shall have been delivered by the Board to said Owner or Owners, provided that the Board shall levy a special assessment against such Owner for the cost of said maintenance or repair. The Board or its agents may enter any Condominium Unit when necessary in connection with any maintenance or construction for which the Board or Association is responsible; any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. The Board or its agents may enter any Condominium Unit when necessary in connection with any maintenance or construction for which the Board or Association is responsible; any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. The Board reserves the right to retain a pass key to each Condominium Unit, and no locks or other devices shall be placed on the doors to the Condominium Units to obstruct entry through the use of such pass key. In the event of any emergency originating in, or threatening, any Condominium Unit, or in the event of the Owner's absence from the Condominium Unit at a time when required alterations or repairs are scheduled, the management agent or his representative or any other person designated by the Board may enter the Condominium Units immediately, whether the Owner is present or not.

(i) Capital Additions and Improvements. The Board's powers hereinabove enumerated shall be limited to the extent that the Board shall have no authority to acquire or provide or pay for out of the maintenance fund any capital additions and improvements (other than for purposes of replacing or restoring portions of the Common Areas, subject to all the provisions of the Declaration) having a total cost in excess of Seventy-Five Thousand Dollars (\$75,000.00), nor shall the Board authorize any structural alterations, capital additions to, or

capital improvements of the Common Areas requiring an expenditure in excess of Seventy-Five Thousand Dollars (\$75,000.00), without in each case the prior approval of the Voting Members holding a majority of the total votes.

(j) Certain Utility Services to Condominium Units. The Board may pay from the maintenance fund for water, taxes, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual Owners. However, the Board may discontinue such payments at any time, in which case each Owner shall be responsible for direct payment of his share of such expenses as determined by the Board. The Board reserves the right to levy additional assessments against any Owner to reimburse it for excessive use by such Owner of any utility service, the expense of which is charged to the maintenance fund.

Section 5. Vouchers. All vouchers for payment of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Board.

Section 6. Rules and Regulations; Management.

(a) Rules. The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Owners and occupants of the property. Written notice of such rules and regulations shall be given to all Owners and occupants and the entire Property shall at all times be maintained subject to such rules and regulations.

(b) Notwithstanding any other provisions herein, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board; provided, however, that it is expressly understood and agreed that Declarant expressly reserves the right to designate an initial managing agent or agents for a period not to exceed one (1) year from the date of the recording of these By-Laws and the rights of the Board to designate a different managing agent shall be in all respects subject to any or all contractual rights resulting from such initial designation of managing agent.

(c) Nothing hereinabove contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all of the Owners or any of them.

ARTICLE VII

Assessments - Maintenance Fund

Section 1. Preparation of Estimated Budget. Each year on or before December 1, the Board shall estimate the total amount necessary to pay the cost of wages, payroll taxes, materials, insurance, services, management fees, supplies, maintenance,

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repairs, landscaping, fuel, power and other common utilities and Common Areas and Facilities, which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements, and shall, on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the Owners according to each Owner's percentage of ownership in the Common Areas and Facilities as set forth in Exhibit "B" of the Declaration. On or before January 1 of the ensuing year, each Owner shall be obligated to pay to the Board, or as it may direct, one-twelfth (1/12) of the assessment made pursuant to this Section. On or before the date of the Annual Meeting of each calendar year, the Board shall supply to all Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures, plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's percentage of ownership in the Common Areas and Facilities to the next monthly installments due from Owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each Owner's percentage of ownership in the Common Areas and Facilities to the installments due in the succeeding six (6) months after rendering of the accounting.

Section 2. Reserve for Contingencies and Replacements. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If said "Estimated Cash Requirement" proves inadequate for any reason, including non-payment of any Owner's assessment, the Board may, at any time, levy a further assessment, which shall be assessed to the Owners according to each Owner's percentage of ownership in the Common Areas and Facilities. The Board shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount.

Section 3. Budget for First Year. When the first Board elected hereunder takes office, it shall determine the "estimated cash requirement", as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31 of the calendar year in which said election occurs. Assessments shall be levied against the Owners during said period as provided in Section 1 of this Article.

Section 4. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual estimate or adjusted estimate, the owner shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 5. Status of Collected Funds. All funds collected hereunder shall be held and expended for the purposes designated herein and (except for such special assessments as may be levied hereunder against less than all the Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Owners in the percentages set forth in Exhibit "B" attached to the Declaration.

Section 6. Remedies for Failure to Pay Assessments. Each Owner shall be personally liable for all assessments made hereunder or pursuant to the Declaration and conveyance of the Condominium Unit by an Owner shall not extinguish the personal debt for all such assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall default in the payment of any charge or assessment imposed by the Board as herein provided, the Board shall have the authority, for and on behalf of itself and the Association and as the representative of all Owners, to exercise and enforce any and all rights and remedies as may be provided in the Act, these By-Laws, the Declaration or otherwise available at law or in equity for the collection of all such unpaid charges or assessments. Upon the failure of any Owner to pay any delinquent assessment within fifteen (15) days after written notice, the Board shall have the right to accelerate the entire unpaid balance of all assessments. In addition, if an Owner is in default in the monthly payments of the aforesaid charges or assessments after such notice, the Board may bring suit for and on behalf of itself and as representative of all Owners, to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest costs and fees as above provided, shall be and become a lien or charge against the Condominium Unit of the Owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Unless otherwise provided in the Declaration, the members of the Board and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Said lien shall take effect and be in force when and as provided in the Act; provided, however, notwithstanding any other provision of the Declaration or By-Laws, any first mortgage owned or held by or on behalf of any bank, insurance company, savings and loan association or other mortgagee shall be prior to any lien for Common Expenses, and where the mortgagee of a first mortgage of record or other purchaser of a Condominium Unit obtains title to the Condominium Unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns shall not be liable for the shares of Common Expenses chargeable to such Condominium Unit which became due prior to the acquisition of title to such Condominium Unit by such acquirer.

ARTICLE VIII

Execution of Instruments

Section 1. Checks, Drafts, Etc. All checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness of the Association shall be signed or endorsed by such officer or

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officers, employee or employees of the Association as shall from time to time be designated by the Board.

Section 2. Contracts. All contracts, agreements, deeds, conveyances, mortgages and similar instruments authorized by the Board of Directors shall be signed, unless otherwise directed by the Board or required by law, by the President and attested by the Secretary.

ARTICLE IX

Amendments

Section 1. Amendments. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements, as amendments to the Declaration, as set forth in Article XI of the Declaration, including the rights of Declarant to make amendments. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Marion County, Indiana, as required by the Declaration and the Act. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration or these By-Laws prior to the earlier of the date on which Declarant shall have conveyed four (4) Condominium Units or January 1, 1985, without the consent and approval of Declarant.

ARTICLE X

The Indiana Horizontal Property Act

The provisions of The Indiana Horizontal Property Law of the State of Indiana, as amended, applicable to any of the matters not herein specifically covered by these By-Laws, are hereby incorporated by reference in and made a part of these By-Laws.

CROSS REFERENCE

AMENDMENT TO DECLARATION AND BY-LAWS OF HERITAGE SQUARE HORIZONTAL PROPERTY REGIME

840034004

CROSS REFERENCE

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Indianapolis, Indiana instrument, executed this 7th day of May, 1984, by E & F Realty Co., an Indiana general partnership (hereinafter referred to as "Declarant"), witnesses the following:

WHEREAS, on March 5, 1984, Declarant executed the Declaration and By-Laws for the horizontal property regime known as Heritage Square, which declaration was recorded on March 5, 1984, as Instrument No. 84-16664 in the Office of the Recorder of Marion County, Indiana (hereinafter referred to as the "Declaration"); and

WHEREAS, in accordance with the provisions of Article IX, Section 8 of the Declaration, and as owner of all of the condominium units in such regime, Declarant has the right to make amendments to the Declaration; and

WHEREAS, Declarant desires to make certain amendments to the Declaration to assist prospective purchasers of units in obtaining mortgage financing.

NOW, THEREFORE, in consideration of the premises, the Declaration is hereby amended as follows:

1. Article VI, Section 1 is amended by deleting the first sentence thereof and inserting in lieu thereof the following:

"Each Condominium unit or any two or more Condominium Units used together shall be used for commercial purposes in accordance with applicable zoning and use laws (as the same may be changed by amendment, variance or the like) and for no other purpose without the consent of the Board."

2. Article VI, Section 3 is amended by deleting the word "residential" in the first sentence of such section and inserting in lieu thereof the word "commercial".

3. Article IX, Section 2 of the Declaration is amended by the addition of the following sentences at the

RECEIVED FOR RECORD
BETH O'LAUGHLIN
RECORDER-HARRISON CO
MAY 9 3 21 PM '84

end of such Section 2:

"Any vote required or allowed to be taken hereunder by the Owners of Condominium Units may be voted by such owner in person or by proxy timely delivered to the appropriate representative of the Board of Directors upon a proxy form approved by the Board or such representative. In the event such a proxy is tendered by a mortgagee holding a first mortgage lien upon a Unit in accordance with any terms and provisions of such mortgage which delegate proxy authority to such mortgagee, the Board of Directors may honor such proxy without further inquiry into the validity of such mortgage and the Board of Directors shall have no further liability to such Owner with respect thereto."

4. Article VII, Section 6 of the Code of By-Laws of Co-Owners Association, Inc., is hereby amended by deleting the last sentence in such section and inserting in lieu thereof the following:

"Said lien shall take effect and be in force when and as provided in the Act; provided, however, notwithstanding any other provision of the Declaration or By-Laws, any first mortgage owned or held by or on behalf of any bank, insurance company, savings and loan association or other mortgagee shall be prior to any lien for Common Expenses, and where the mortgagee of a first mortgage of record or other purchaser of a Condominium Unit obtains title to the Condominium Unit as a result of foreclosure of the first mortgage or as a result of a deed in lieu of foreclosure, such acquirer of title, his successors and assigns shall not be liable for the shares of Common Expenses chargeable to such Condominium Unit which became due prior to the acquisition of title to such Condominium Unit by such acquirer."

8:1 3:1001

IN WITNESS WHEREOF, Declarant has executed this
Amendment as of the date first above written.

E & F REALTY CO.

Franklin L. Jackson
FRANKLIN L. JACKSON
GENERAL PARTNER

STATE OF INDIANA)
COUNTY OF MARION) SS:

Before me a Notary Public in and for said County
and State personally appeared Franklin L. Jackson
General Partner of E & F Realty Co. who, having
been first duly sworn, acknowledged the execution of the fore-
going amendment for and on behalf of said partnership.

Witness my hand and Notarial Seal this 1st day of ...
May 1984.

Joanne M. Clark
JOANNE M. CLARK Notary Public

My commission expires:
Jan. 2 1988
My county of residence:
Johnson

This instrument was prepared by John W. Van Buskirk, Attorney.